

Draft Environmental Assessment

Mulherin Creek Water Lease Renewal

7/6/2018



Draft Environmental Assessment CHECKLIST

PART I. PROPOSED ACTION DESCRIPTION

- 1. Type of proposed state action: Administrative**
- 2. Agency authority for the proposed action: Montana Fish, Wildlife & Parks**
FWP has statutory authority to lease water rights and temporarily change them to instream flow with renewal periods of up to 10 years (§85-2-436 MCA).
- 3. Name, address and phone number of project sponsor (if other than the agency)**
Montana Fish, Wildlife & Parks
1420 East 6th Avenue
Helena, MT 59620
(406) 444-1229
- 4. Anticipated Schedule:**
Estimated Instream Flow Lease Renewal Commencement Date: 2019
Estimated Instream Flow Lease Completion Date: 2028
Current Status of Project: The Water Lease Renewal Agreement has been signed by the lessors and approved by the Montana Fish & Wildlife Commission. The notice of renewal of the temporary change to instream flow will be filed with DNRC in the summer 2018.
- 5. Location affected by proposed action (county, range and township – included map):**
The project is located in Park County in Section 24, Township 8S, Range 7E.

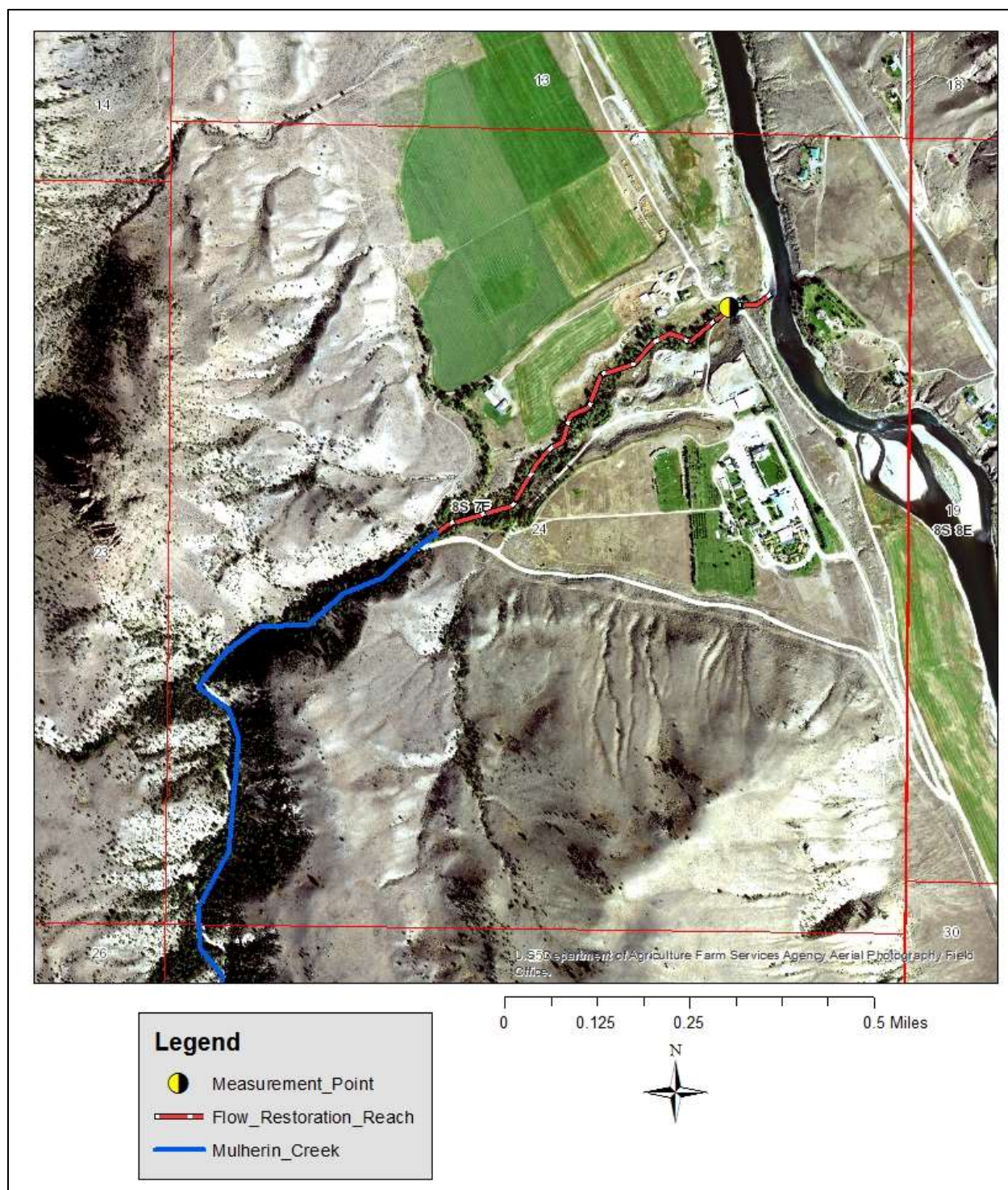


Figure 1: Deep Creek drainage and monitoring sites

6. Project size -- estimate the number of acres that would be directly affected that are currently:

	<u>Acres</u>		<u>Acres</u>
(a) Developed:		(d) Floodplain	<u>0</u>
Residential	<u>0</u>		
Industrial	<u>0</u>	(e) Productive:	
(existing shop area)		Irrigated cropland	<u>0*</u>
(b) Open Space/	<u>0</u>	Dry cropland	<u>0</u>
Woodlands/Recreation		Forestry	<u>0</u>
(c) Wetlands/Riparian	<u>0</u>	Rangeland	<u>0</u>
Areas		Other	<u>0</u>

*The amount of presently irrigated cropland will remain unchanged.

8. Permits, Funding & Overlapping Jurisdiction.

(a) **Permits:** permits will be filed at least 2 weeks prior to project start.

<u>Agency Name</u>	<u>Permits</u>
DNRC	Notice of Renewal

(b) **Funding:**

<u>Agency Name</u>	<u>Funding Amount</u>
Future Fisheries Improvement Program	\$38,175
Montana Fish, Wildlife & Parks	\$38,175

(c) **Other Overlapping or Additional Jurisdictional Responsibilities:**

<u>Agency Name</u>	<u>Type of Responsibility</u>
DNRC	facilitates water resources issues

9. Narrative summary of the proposed action:

The objective of this project is to preserve the status quo regarding stream flow and Yellowstone Cutthroat Trout (YCT) recruitment from Mulherin Creek for the next 10 years. The current instream flow water lease has been in place for 19 years and expires after the 2018 irrigation season. The lease is for a range of flows from 5 to 27 cfs, including the most senior right on Mulherin Creek. The lease guarantees that 5 cfs remain instream before any water is taken for irrigation by the lessor.

The proposal would renew the lease for 10 years, the maximum period allowed under present state statute. However, the lease renewal agreement provides for four additional 10-year renewals, if allowed by law at the time of renewal. The future price is set using the same means by which the current renewal price was determined.

The Corwin Springs Section of the Yellowstone River remains a stronghold for YCT. Mulherin Creek provides critical YCT spawning for this section of the Yellowstone River. YCT adults migrate into Mulherin Creek and its tributaries to spawn on the falling limb of the hydrograph with fry emerging in late August and emigrating to Yellowstone River. The water lease and temporary change to instream flow insure that Mulherin Creek is not dewatered in late summer

allowing YCT fry to emerge and successfully emigrate to the Yellowstone River.

10. Description and analysis of reasonable alternatives:

Alternative A: Fund the water lease renewal and continue to protect streamflow levels.

Alternative B: Do not fund the water lease renewal and no longer protect instream flow with senior water rights.

11. Evaluation and listing of mitigation, stipulation, or other control measures enforceable by the agency or another government agency:

The renewal of the current temporary changes to instream flow will need to be approved by DNRC. DNRC will provide other water users the opportunity to provide new evidence of adverse effects that was not previously considered. If no such evidence is provided, the temporary change to instream flow will be extended for a period of 10 years. If new evidence is provided, a new application to temporarily change the water rights to instream flow will need to be filed and approved in order to continue the protection of instream flow using the senior water rights.

DPART II. ENVIRONMENTAL REVIEW CHECKLIST

Evaluation of the impacts of the Proposed Action including secondary and cumulative impacts on the Physical and Human Environment.

A. PHYSICAL ENVIRONMENT

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Provided
1. Geology and soil quality, stability and moisture				X		
2. Air quality or objectionable odors				X		
3. Water quality, quantity and distribution (surface or groundwater)				X		
4. Existing water right or reservation				X		X
5. Vegetation cover, quantity and quality				X		
6. Unique, endangered, or fragile vegetative species				X		
7. Terrestrial or aquatic life and/or habitats				X		
8. Unique, endangered, or fragile wildlife or fisheries species				X		
9. Introduction of new species				X		

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Provided
into an area						
10. Changes to abundance or movement of species				X		

4. Existing water right or reservation.

The current water management under the current temporary change to instream flow would remain unchanged. No new or additional impacts to existing water users would occur as a result of the renewal of the water lease and the temporary change to instream flow. If new evidence of adverse effects is submitted during the renewal process, a new application to temporarily change the water rights to instream flow would be required. The application would require a new review to insure other water users are not adversely affected and provide for any conditions needed to prevent adverse effects.

B. HUMAN ENVIRONMENT

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Provided
1. Noise and/or electrical effects				X		
2. Land use				X		
3. Risk and/or health hazards				X		
4. Community impact				X		
5. Public services/taxes/utilities				X		
6. Potential revenue and/or project maintenance costs				X		
7. Aesthetics and recreation				X		
8. Cultural and historic resources				X		
9. Evaluation of significance				X		
10. Generate public controversy				X		

PART III. NARRATIVE EVALUATION AND COMMENT

There are no anticipated cumulative effects.

PART IV. PUBLIC PARTICIPATION

1. Public involvement:

The public will be notified in the following manners to comment on this current EA, the proposed action and alternatives:

- Public notice on the Fish, Wildlife & Parks web page: <http://fwp.mt.gov>.

This level of public notice and participation is appropriate for a project of this scope having limited impacts and is administrative in nature.

PART V. EA PREPARATION

1. **Based on the significance criteria evaluated in this EA, is an EIS required? NO**
If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action.

We conclude, from this review, that the proposed activities will have an overall positive impact on the physical and human environment, and will therefore not require the extensive analysis associated with an EIS.

2. **Person(s) responsible for preparing the EA:**

Michelle McGree, Program Officer
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1420 East 6th Avenue, PO Box 200701
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Telephone: (406) 444-2432
e-mail: mmcgree@mt.gov

3. **List of agencies or offices consulted during preparation of the EA:**

Andy Brummond, Montana Fish, Wildlife & Parks
Scott Optiz, Montana Fish, Wildlife & Parks